troubling, since all of GTE's other ACFs are virtually identical, and therefore cannot be justified as a comparison of different vintages of ACFs.

United/Central

The limited data supplied by United/Central shows that DS3 VEIS elements in Illinois have significantly higher Administration ACFs than a comparable DS3 Channel Termination.[59] United/Central attempts to defend its differing estimates of annual costs for depreciation, return and income taxes among the services by arguing that its cost results are not based on historical information but on "assumptions" made about estimated service lives, the authorized rate-of-return, and income tax rates in effect on federal and state levels.[60] United/Central has neither identified nor justified its "assumptions." It would not be unreasonable to conclude that the "assumptions" used by United/Central resulted in higher costs for VEIS than for its own services.

Accordingly, the Bureau should further adjust the RAFs for VEIS to reflect the differences in ACFs utilized by the LECs.

## VI. WHEN COMPARED TO DS1/DS3 SERVICES, SEVERAL LECS HAVE APPLIED EXCESSIVE OVERHEAD LOADINGS TO VIRTUAL COLLOCATION SERVICES.

As demonstrated in Section II, several of the LECs have made aggressive attempts to withhold or obfuscate the required cost data. Nevertheless, the limited data that has been supplied

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[59] United/Central Direct Case, Exhibit A, page 2.

[60] Id. at 3.

shows several instances in which overhead loadings have been applied in a manner that unreasonably discriminates against virtual collocation customers.

BellSouth

BellSouth argues that its overhead loadings are in compliance with the Commission's rules, which do not require absolute parity in overhead loadings. Specifically, BellSouth argues that the only meaningful comparison is between LEC services and CAP services.[61] According to BellSouth, CAPs will assign their own overhead loadings to their services on top of whatever loadings the LEC assigns.

BellSouth, however, misses the point: the margins that may be applied by CAPs are not relevant to a determination of the reasonableness of the LEC's overhead loadings for virtual collocation elements. The Commission has previously indicated it is "unpersuaded" by Southwestern Bell's similar claim that LEC overhead loadings would not deter competitive entry, even if CAPs' profit levels are reduced.[62]

The Commission directed the companies to "list the central office investment and cost components for each of the comparable DS1 and DS3 services."[63] In response to this directive, BellSouth attempted to split its central office investment for

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[61] BellSouth Direct Case at 3.

[62] Virtual Collocation Tariff Suspension Order at ¶ 22, n.58.

[63] Designation Order at ¶ 17(d).

its DS1 and DS3 services from the total investment related to these services. However, BellSouth: (a) does not provide the underlying cost studies to justify its investments; and (b) uses inconsistent methodology when determining the central office related investment for DS1 service and the central office related investment for DS3 services. For DS1 service, circuit equipment investment (plus associated Land and Building loadings) are split 50% to central office related investment and non-central office related investment.[64] By contrast, for DS3 LightGate service, 100% of the circuit equipment investment (plus associated Land and Building loadings) are attributed to central office equipment. BellSouth then presents the resulting investments and derived expenses in comparison to the investments and expenses for its virtual collocation Cross-Connection functions.[65]

This misallocation of costs enables BellSouth to falsely demonstrate that its comparable DS3 service carries a higher amount of expense and overhead loadings than is actually the case. In reality, if the methodology applied to its DS3 service were consistent with the methodology used for DS1 service, the DS3 service would exhibit much lower investment and expense levels than shown in BellSouth's Direct Case. By inflating the investments and expenses attributed to the comparable DS3 service, the company attempts to downplay the expenses and

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[64] See Table 3-B.

[65] See BellSouth Direct Case, Exhibit 4B at 1-2

overhead loadings attributable to its DS3 virtual collocation service.

However, other data furnished by BellSouth shows that virtual collocation services have been saddled with disproportionate levels of investment. When Land and Building and other reported ancillary costs are summed and compared to the actual investments related to DS1, DS3, and virtual collocation services, the ancillary costs swamp the actual equipment investments for virtual collocation services.

Table 3-C provides an illustration of the relationship between the direct investment costs and the ancillary costs BellSouth applies to virtual collocation and comparable DS1/DS3 services. The company's unit investment data were derived relative to different units, e.g., the DS1 Cross Connect cost is per DS1, while Floor Space costs are presented on a per square foot basis. Therefore, Table 3-C shows the costs including a minimum level of each investment category, including eight square feet of Floor Space and ten amps of power. On that basis, BellSouth's claimed ancillary costs for its comparable DS1 and DS3 services represent only 4.9% and 6.8% of the direct investment costs, respectively.

In stark contrast, the ancillary costs charged to its DS1 virtual collocation service is nearly *twice* the direct investment (198%), while the ancillary costs applied to DS3 VEIS is *sixteen times* the direct investment (1643%).[66] This extreme disparity

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[66] See Table 3-C.

between the ancillary costs attributable to comparable DS1/DS3 services and VEIS is further evidence that the company's originally-filed rates for VEIS are discriminatory and anticompetitive.

GTE

Certain LECs, such as GTE, argue that allowable rate changes under price caps have altered the relationship between DS1/DS3 services and VEIS such that it is unreasonable to expect uniformity of overhead loadings.[67] As explained earlier in these comments, the focus of the Bureau's investigation is the *current* relationship between VEIS and comparable services' overhead loadings, not their historical relationship.

GTE's summary comparisons of overhead loadings (for both the GTOC and GTSC companies) rely on end-to-end DS1/DS3 circuits that include outside plant mileage and subscriber premises equipment. Because these types of facilities are not used for VEIS and generally will have different expense factors than central office equipment, they cannot be compared in aggregate with virtual collocation services. Thus, any direct comparison of the overhead loadings for VEIS and DS1/DS3 services would be invalid.[68]

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67 GTE Direct Case at 3-4.

68 See GTE Direct Case, Attachments G-DS1-OVH and G-DS3-OVH and supporting workpapers for the GTOC companies, and Attachments C-PWEQ-OVH and C-DS3-OVH and supporting workpapers for the GTSC companies.

Moreover, GTE failed to comply with the Commission's directive to identify the unit investment components of DS1/DS3 services disaggregated, at a minimum, into circuit equipment, fiber, conduit, buildings, and land.[69] Because of GTE's failure to comply with the Designation Order, TWComm cannot compare the overhead loadings for VEIS and DS1/DS3 services.

## VII. NONRECURRING CHARGES ASSOCIATED WITH VEIS SHOULD NOT INCLUDE OVERHEAD LOADINGS.

Several LECs admit that they have applied overhead loadings to their nonrecurring charges ("NRCs"), even though such loadings are not applied to NRCs for their other DS1/DS3 offerings.[70] These loadings should be removed unless the LEC applies equivalent loadings to NRCs for its comparable DS1/DS3 services.

Ameritech

Ameritech includes overhead loadings in its nonrecurring rates.[71] Ameritech contends that it is reasonable to assign overheads to nonrecurring charges because "[o]verhead loadings were applied to direct costs for all rate elements" and the loading factor used "is the figure that it last utilized for the development of cost-based rates prior to price caps."[72] Regarding the Bureau's inquiry as to whether similar loadings are

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[69] Designation Order at ¶ 17(b).

[70] See, e.g., Southwestern Bell Direct Case, Appendix 9 at 1. Other carriers claim that they do not apply overhead loadings to VEIS NRCs. See GTE Direct Case, Attachment 1, page 1.

[71] Ameritech Direct Case at 8.

[72] Id. at 8-9.

included in the NRCs for comparable DS1 and DS3 services, Ameritech states that prior to price caps such loadings were included in these rates.[73] Ameritech, like the other LECs, fail to recognize that the current relationship between DS1/DS3 services and VEIS is of relevance. Given Ameritech's failure to justify the application of overhead loadings to NRCs and the fact that these loadings are not applied to comparable DS1/DS3 services, the Commission should reject Ameritech's proposed NRCs for VEIS.

BellSouth

BellSouth also includes overhead loadings in its nonrecurring rates.[74] BellSouth states that its labor rate used in the VEIS cost study is a "fully assigned labor rate plus fixed costs."[75] BellSouth further claims that the labor rate is developed by "adding indirect administration, unclassified support, unclassified costs, and benefits to the directly assigned labor rate. Total fixed costs are loadings added to the labor rates to include general overhead costs, i.e., land and building (other than central offices), furniture, office equipment, and personal computers."[76] In addition, BellSouth

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73 Id. at 10.

74 BellSouth Direct Case, Exhibit 1 at 3.

75 Id.

76 Id.

states that "[f]or DS1 and DS3 services . . . overhead loadings are recovered only through recurring rate elements."[77]

Yet BellSouth applies overhead loadings to VEIS and not to its own DS1 and DS3 services because "[g]iven the numerous recurring rate elements associated with BellSouth's DS1 and DS3 services, there is no need to recover overhead costs in the nonrecurring charge."[78] BellSouth disregarded the Bureau's directive to remove such overhead loadings or, in the alternative, to provide a detailed justification for inclusion of such loadings in its nonrecurring rates.[79] Accordingly, TWComm urges the FCC to require BellSouth to recalculate its nonrecurring charges without overhead loadings.[80]

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[77] Id. at Exhibit 1, page 4.

[78] Id.

[79] See Designation Order at ¶ 24.

[80] The Commission has previously required that NRCs be applied in a neutral manner that does not differentiate charges based on whether the end-user chooses to use interconnector or LEC facilities for special access services unless there are "specific, identifiable cost differences." New York Telephone and New England Telephone and Telegraph Company, Petition for Waiver, DA 95-523 at ¶ 1 (released March 20, 1995), citing Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd 7369, 7465 (1992). In other words, "any difference between the NRCs applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service, but remains on the LEC network, must be cost-based." Id. at ¶ 2, citing Expanded Interconnection with Local Telephone Company Facilities, Second Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-141, 8 FCC Rcd 7341, 7362 (1993). Although LECs may petition for a waiver of this requirement, certain conditions must first be met. No LEC has provided any explanation or met any of the conditions required to justify a departure from the requirement that NRCs for VEIS and comparable DS1/DS3 services be set in a neutral manner. See id.

## VIII. ABSENT COMPELLING JUSTIFICATION, THE COMMISSION SHOULD REQUIRE SUBSTANTIAL DOWNWARD ADJUSTMENTS TO THE UNREASONABLY HIGH RISER CABLE SPACE RATES CHARGED BY CINCINNATI BELL AND CERTAIN OTHER LECS.

The need for additional cost justification for the LECs' virtual collocation rates is particularly well illustrated by a comparison of their reported costs for riser cable space. Ameritech has reported a monthly unit (per foot) cost of $0.28 for this element, based on a total unit investment of $12.43.[81] In contrast, Cincinnati Bell claims a unit cost of $15.03, *nearly fifty-four times higher.*[82] Some, but by no means all, of the difference reflects the difference in reported unit investments, since Cincinnati Bell claims a total unit investment of $393.88 for riser cable space, nearly thirty-two times as much as claimed by Ameritech.[83]

Disparities of this magnitude are clearly impossible to explain away as a result of regional cost variations, and appear to be a blatant attempt to discourage competitors' use of virtually collocated facilities. The Commission must ensure that LECs with riser space rates based on such facially unreasonable cost levels -- which also include BellSouth and GTE -- fully explain the basis for their reported costs. Absent such

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[81] Ameritech Direct Case, Attachment V at P-1.

[82] Cincinnati Bell also appears to apply significantly higher ACFs compared to Ameritech. For example, Cincinnati Bell applies a 13.45% Cost of Money compared to Ameritech's 7.44% Cost of Money factor.

[83] Cincinnati Bell Direct Case, Exhibit A (public version, Virtual Collocation Elements at sheet 7 ("DS1 Entrance Function").

compelling justification, the Commission should require the LECs to make substantial downward adjustments to their riser cable space rates to bring them into line with the more reasonable levels provided by Ameritech.

## IX. CONCLUSION

Accordingly, for the reasons described above, the Bureau should take the following actions:

- Find that the LECs have not provided the justification necessary for its proposed VEIS overhead loadings, and that rate adjustment factors ("RAFs") should remain unchanged except as discussed below;

- Modify RAFs to reflect the use of higher annual charge factors ("ACFs") for virtual collocation service element;

- Direct the LECs to remove overhead loadings from nonrecurring charges ("NRCs") or file NRCs for comparable DS1/DS3 services that include overhead loadings similar to those applied to VEIS elements;

- Direct the LECs to make substantial downward adjustments to the unreasonably high riser cable space rates;

- Direct the LECs to comply with the Designation Order and provide the required information within 30 days or show cause why they should not be subject to a fine for failure to comply with the Bureau's order;

- Provide interested parties with the opportunity to file comments within two weeks after receipt of the required cost information;

- Allow interested parties to enter into a protective agreement to obtain any cost data found by the Commission to be proprietary.

Respectfully submitted,

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Table 1

**THE LIMITED AND/OR DEFECTIVE COST DATA PUBLICLY SUPPLIED BY THE CARRIERS SEVERELY RESTRICTS INTERESTED PARTIES' ABILITY TO MAKE USEFUL COMPARISONS**

| | CARRIER PROVIDED RESPONSIVE PUBLIC DATA RE: | | | COMPARISONS CAN BE PERFORMED FOR: | | |
|---|---|---|---|---|---|---|
| CARRIER | Unit Investments | Annual Cost Factors | Overhead Levels | Unit Investments | Annual Cost Factors | Overhead Levels |
| Ameritech | No | Yes | No | No | Yes | No |
| BellSouth (1) | Proxy Data Only | Proxy Data Only | Proxy Data Only | Limited Comparisons | Limited Comparisons | Limited Comparisons |
| Cincinnati Bell (2) | Public Version Not Useful | Not Useful | Public Version Not Useful | No | No | No |
| GTE (3) | No | Yes | No | No | Yes | No |
| Southwestern Bell (4) | No | No | No | No | No | No |
| United/Central | Limited Data Only | Limited Data Only | Limited Data Only | Limited Comparisons | Limited Comparisons | Limited Comparisons |

(1) BellSouth failed to furnish cost data for DS3 switched local transport service, providing DS3 Lightgate data as a proxy.
(2) Cincinnati Bell's "Public Version" fails to provide component-by-component investment, ACF and OH loading data.
(3) GTE failed to provide VEIS cost data in a similarly disaggregated format to permit comparisons of unit investments and overheads.
(4) SWB failed to provide any useful cost data on a public basis.
(5) United/Central provided data for only two out of 13 filing entities, and failed to furnish unit investment estimates.

Table 2

**AMERITECH**

**AMERITECH ANNUAL CHARGE FACTORS FOR VEIS ARE GENERALLY HIGHER THAN THOSE APPLIED TO ITS DS1 AND DS3 SERVICES**

| | DS1 Termination Function | | DS3 Termination Function | | DS1 X-Conn Function | | DS3 X-Conn Function (1) | | Entrance Function | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Company (2) | VEIS (3) | Company (4) | VEIS (5) | Company (6) | VEIS (7) | Company (8) | VEIS (9) | Company (10) | VEIS (11) |
| Depreciation | 0.1548 | 0.1924 | 0.1534 | 0.1924 | 0.1552 | 0.1671 | 0.1689 | 0.1670 | 0.1418 | 0.1671 |
| Cost of Money | 0.0626 | 0.0638 | 0.0628 | 0.0638 | 0.0626 | 0.0460 | 0.0662 | 0.0461 | 0.0686 | 0.0481 |
| Income Tax | 0.0282 | 0.0385 | 0.0291 | 0.0385 | 0.0282 | 0.0185 | 0.0336 | 0.0185 | 0.0226 | 0.0185 |
| Ad Valorum Tax | 0.0081 | 0.0063 | 0.0091 | 0.0063 | 0.0070 | 0.0081 | 0.1027 | 0.0081 | 0.0086 | 0.0062 |
| Maintenance | 0.0256 | 0.0299 | 0.0246 | 0.0299 | 0.0268 | 0.0169 | 0.0364 | 0.0168 | 0.0141 | 0.0168 |
| Total | 0.2793 | 0.3309 | 0.2790 | 0.3309 | 0.2798 | 0.2565 | 0.4078 | 0.2566 | 0.2557 | 0.2566 |

(1) This comparison appears to be invalidated due to data errors. Specifically, Ameritech's Income Tax and Ad Valorum Tax annual cost factors for this category are significantly different from the Income Tax and Ad Valorum Tax cost factors applied to other categories.
(2) Termination Equipment\DS1 Local Distribution Element
(3) Termination Function\Equipment Bay element
(4) Termination Equipment\DS3 Local Distribution Channel
(5) Electrical Element
(6) DS1 Cross Connection\DS1 Channel Mileage Term.
(7) DS1 X-Conn Function\DS1 Electrical X-Conn.
(8) DS3 Cross connection\DS3 Channel Mileage Term.
(9) DS1 X-Conn\DS1 Electrical X-Conn.
(10)Other\DS3 Entrance Function
(11)DS1/DS3 Entrance Function\Riser Facility

Sources:
Ameritech Direct Case, Attachment III
Ameritech Direct Case, Attachment VI

Table 3-A

BELLSOUTH

BELLSOUTH APPLIED INCONSISTENT ANNUAL CHARGE
FACTORS FOR VEIS, DS1 AND DS3 SERVICES (1)

| | Circuit-Other Digital | | Elect. Digital Eq. | | Analog Elect. Eq. | | Land | | | Buildings | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | LightGate (2) | | | LightGate | |
| | DS1 | VEIS | DS1 | VEIS | DS1/DS3 | VEIS | DS1 | DS3 | VEIS | DS1 | DS3 | VEIS |
| Depreciation (3) | 0.1171 | 0.1119 | 0.0719 | 0.0830 | N/A | 0.1023 | 0.0000 | 0.0000 | 0.0000 | 0.0259 | 0.0304 | 0.0259 |
| Cost of Money | 0.0766 | 0.0769 | 0.0831 | 0.0791 | N/A | 0.0756 | 0.1192 | 0.1192 | 0.1191 | 0.1146 | 0.1132 | 0.1143 |
| Income Tax | 0.0337 | 0.0341 | 0.0371 | 0.0360 | N/A | 0.0325 | 0.0537 | 0.0540 | 0.0538 | 0.0510 | 0.0496 | 0.0509 |
| Maintenance (3) | 0.0080 | 0.0081 | 0.0342 | 0.0355 | N/A | 0.0244 | 0.0000 | 0.0000 | 0.0000 | 0.0037 | 0.0038 | 0.0032 |
| Ad Valorum Tax | 0.0121 | 0.0120 | 0.0121 | 0.0120 | N/A | 0.0120 | 0.0121 | 0.0076 | 0.0120 | 0.0121 | 0.0159 | 0.0120 |
| Administration (3) | 0.0364 | 0.0369 | 0.0364 | 0.0369 | N/A | 0.0369 | 0.0000 | 0.0000 | 0.0368 | 0.0000 | 0.0000 | 0.0369 |
| Total | 0.2839 | 0.2799 | 0.2748 | 0.2825 | N/A | 0.2837 | 0.1850 | 0.1808 | 0.2217 | 0.2073 | 0.2129 | 0.2432 |

Notes:

(1) BellSouth failed to present data in the required TRP categories. The categories shown are those identified in BellSouth's Exhibit 3C for VEIS.

(2) LightGate Service factors shown are for South Carolina.

(3) Depreciation, maintenance, and administration loading factors for land are 0.000 for LightGate Service in all BellSouth reported states.

Sources:

BellSouth Direct Case, Exhibit 3A.

BellSouth Direct Case, Exhibit 3B.

BellSouth Direct Case, Exhibit 3C.

Table 3-B

**BELLSOUTH**

**BELLSOUTH USES INCONSISTENT METHODOLOGIES WHEN SEPARATING CENTRAL OFFICE RELATED INVESTMENTS FROM TOTAL INVESTMENTS FOR DS1 AND DS3 COMPARABLE SERVICES**

| | DS1 | | | DS3 | | |
|---|---|---|---|---|---|---|
| Type of Investment | Total Investment | C.O. Only Investment | Percent | Total Investment | C.O. Only Investment | Percent of Total |
| Cir. Equip. (257C) | $1,054.88 | $527.44 | 50% | $12,951.35 | $12,951.35 | 100% |
| Land (20C) | $6.04 | $3.02 | 50% | $38.78 | $38.78 | 100% |
| Buildings (10C) | $120.46 | $60.23 | 50% | $843.63 | $843.63 | 100% |

Sources:
BellSouth Exhibit 2
BellSouth Exhibit 4A

Table 3-C

**BELLSOUTH**

**BELLSOUTH ALLOCATES EXCESSIVE ANCILLARY COSTS TO VEIS DIRECT INVESTMENTS RELATIVE TO COMPANY DS1 AND DS3 SERVICES**

| | Company DS1 Functions (1) | VEIS DS1 Functions | Company DS3 Functions | VEIS DS3 Functions |
|---|---|---|---|---|
| Direct Investments | $1,301.39 | $242.46 | $12,951.35 | $2,028.33 |
| Ancillary Costs(2) | $63.25 | $3,984.15 | $882.41 | $4,021.99 |
| Ratio | 4.86% | 1643.22% | 6.81% | 198.29% |

Notes:

(1) Company DS1 and DS3 functions include the portion of the total DS1 and DS3 investment that BellSouth has included as investment related to the central office.
(2) Ancillary costs include all nondirect investments such as land, buildings, floor space, and power.
(3) Ancillary costs assume a minimum of 8 square feet of floor space and 10 amperes of power.

Sources:
BellSouth Exhibit 2, page 3.
BellSouth Exhibit 4A
BellSouth Exhibit 4B

Table 4

## GTE APPLIED UNREASONABLY HIGHER MAINTENANCE ACFs TO VIRTUAL COLLOCATION SERVICES THAN ITS OWN DS1/DS3 SERVICES

| Study Area | Maintenance Annual Charge Factor Applied (Percent) Comparable DS1/DS3 (1) | VEIS (2) | Discrepancy |
|---|---|---|---|
| **GTOC Areas** | | | |
| California | 4.88 | 8.35 | 71% |
| Florida | 8.57 | 8.43 | -2% |
| Hawaii | 3.78 | 6.44 | 70% |
| Idaho | 3.9 | 1.74 | -55% |
| Illinois | 6.19 | 5.74 | -7% |
| Indiana | 5.06 | 7.26 | 43% |
| Kentucky | 3.52 | 5.58 | 59% |
| Michigan | 3.63 | 6.42 | 77% |
| Missouri | 3.66 | 5.92 | 62% |
| North Carolina | 2.54 | 4.85 | 91% |
| Ohio | 3.76 | 6.94 | 85% |
| Oklahoma | 4.49 | 6.89 | 53% |
| Oregon | 4.28 | 7.76 | 81% |
| Pennsylvania | 4.94 | 7.16 | 45% |
| South Carolina | 2.54 | 5.07 | 100% |
| Texas | 4.51 | 7.2 | 60% |
| Washington | 3.4 | 5.47 | 61% |
| Wisconsin | 4.2 | 5.07 | 21% |
| Average, All Areas | | | 51% |
| | | | |
| **GTSC Areas** | | | |
| Arkansas | 6.44 | 7.42 | 15% |
| California | 7.81 | 7.7 | -1% |
| Illinois | 4.88 | 6.06 | 24% |
| Missouri | 4.88 | 6.9 | 41% |
| Texas | 5.06 | 7.44 | 47% |
| Virginia | 5.87 | 6.5 | 11% |
| Washington (Contel) | 6.07 | 5.47 | -10% |
| Average, All Areas | | | 18% |

(1) Comparison Services are DS1 and DS3 SAL, 5-Year Term Plans (Circuit Eqt. Maint. ACF).

(2) VEIS Components are: DS1 and DS3 Cross-Connects, Power Equipment excluding Floor Space component, Maintenance Fee - Alarm Network

(3) Worksheets were not provided for DS1 in Texas, DS3 in Washington.

## CERTIFICATE OF SERVICE

I, Catherine DeAngelis, do hereby certify that on this 4th day of April, 1995, copies of the foregoing "Opposition of Time Warner Communications Holdings, Inc." were delivered by hand, unless otherwise indicated, to the following parties:

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